

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Travelcomm Industries, Inc.	)	File No. EB-05-TC-031
d/b/a Travel Comm, Inc.	)	NAL/Acct. No. 200732170058
d/b/a Canadian Travel	)	FRN: 0016560401
d/b/a Patriot Travel	)	
d/b/a Cheap Tickets Cancun	)	
d/b/a Cancun Adventures	)	
d/b/a CancunAllInclusive.net	)	
d/b/a International Resort Reservations	)	
d/b/a Mxresorts	)	
d/b/a Mexico Marketing LLC	)	
Apparent Liability for Forfeiture	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: July 23, 2007**

**Released: July 23, 2007**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”),<sup>1</sup> we find Travelcomm Industries, Inc. (“Travelcomm”)<sup>2</sup> apparently willfully or repeatedly violated section 227 of the

<sup>1</sup> 47 U.S.C. § 503(b)(1). The Commission has the authority under this section of the Act to assess a forfeiture against any person who has “willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act ....” See also 47 U.S.C. § 503(b)(5) (stating that the Commission has the authority under this section of the Act to assess a forfeiture penalty against any person who is not a common carrier so long as (A) such person is first issued a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission nearest to the person's place of resident; and (C) subsequently engages in conduct of the type described in the citation).

<sup>2</sup> According to publicly available information, Travelcomm is also doing business as “Travel Comm, Inc.,” “Canadian Travel,” “Patriot Travel,” “Cheap Tickets Cancun,” “Cancun Adventures,” “CancunAllInclusive.net,” “International Resort Reservations,” “Mxresorts” and “Mexico Marketing LLC.” Therefore, all references in this NAL to Travelcomm encompass Travelcomm Industries, Inc. as well as “Travel Comm, Inc.,” “Canadian Travel,” “Patriot Travel,” “Cheap Tickets Cancun,” “Cancun Adventures,” “CancunAllInclusive.net,” “International Resort Reservations,” “Mxresorts” and “Mexico Marketing LLC.” Travelcomm has offices at 5850 Lakehurst Drive, #280, Orlando, FL 32819 and 5895 Carrier Drive, Orlando, FL 32819. Rigoberto Sotolongo is listed as contact person for Travelcomm. Accordingly, all references in this NAL to Travelcomm also encompass the foregoing individual and all other principals and officers of this entity, as well as the corporate entity itself. The Registered Agent for Travelcomm is listed as Dorough, Calzada & Hamner, P.L., 419 North Magnolia Avenue, Orlando, FL 32801.

Communications Act of 1934, as amended (“Act”), and the Commission's rules and orders by delivering at least one unsolicited, prerecorded advertising message to a consumer.<sup>3</sup> Based on the facts and circumstances surrounding this apparent violation, we find that Travelcomm is apparently liable for a forfeiture in the amount of \$4,500.

## II. BACKGROUND

2. Section 227(b)(1)(B) of the Act prohibits any person from initiating “any telephone call to any residential telephone line using any artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission.”<sup>4</sup> Section 64.1200(a)(2) of the Commission's rules provides exemptions for calls: 1) made for emergency purposes; 2) made for non-commercial purposes; 3) made for commercial purposes that do “not include or introduce an unsolicited advertisement<sup>5</sup> or constitute a telephone solicitation”;<sup>6</sup> 4) to persons “with whom the caller has an established business relationship<sup>7</sup> at the time the call is made”; and 5) “made by or on behalf of a tax-exempt nonprofit organization.”<sup>8</sup>

3. On April 15, 2005, in response to a complaint alleging that Travelcomm had delivered unsolicited, prerecorded advertising messages to a consumer, the Commission staff issued a citation to Travelcomm<sup>9</sup> pursuant to section 503(b)(5) of the Act. The staff cited Travelcomm for delivering one or more prerecorded, unsolicited advertisements to a residential telephone line, in violation of section 227 of the Act and the Commission's rules and orders.<sup>10</sup> According to the consumer, the unsolicited

---

<sup>3</sup> See 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. §§ 64.1200(a)(2); *see also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) ( *TCPA Revisions Report and Order*).

<sup>4</sup> 47 U.S.C. § 227(b)(1)(B).

<sup>5</sup> “Unsolicited advertisement” means “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.” 47 C.F.R. § 64.1200(f)(13).

<sup>6</sup> “Telephone solicitation” means “the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.” 47 C.F.R. § 64.1200(f)(12).

<sup>7</sup> An “established business relationship” is defined as “a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.” 47 C.F.R. § 64.1200(f)(4).

<sup>8</sup> 47 C.F.R. § 64.1200(a)(2).

<sup>9</sup> See Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, issued to Travelcomm on April 15, 2005.

<sup>10</sup> See 47 U.S.C. § 503(b)(5) (requiring the Commission to issue citations to non-common carriers for violations of the Act or of the Commission's rules and orders).

advertisements offered information concerning vacation travel tickets.<sup>11</sup> The citation, which the staff served by certified mail, return receipt requested, informed Travelcomm that subsequent violations could result in the imposition of monetary forfeitures of up to \$11,000 per violation and included a copy of the consumer complaint that formed the basis of the citation. The citation informed Travelcomm that within 30 days of the date of the citation, it could either request a personal interview at the nearest Commission field office, or could provide a written statement responding to the citation. The Commission received a signed return receipt evidencing Travelcomm's receipt of the citation on April 21, 2005. Travelcomm did not respond to the citation.

4. Despite the citation's warning that subsequent violations could result in the imposition of monetary forfeitures, the Commission has obtained evidence indicating that Travelcomm apparently continued to violate the ban on sending unsolicited prerecorded advertising messages. Specifically, on August 12, 2006, Travelcomm apparently contacted a consumer and left a prerecorded message advertising Travelcomm's discount, vacation travel tickets to Cancun.<sup>12</sup> The consumer has indicated that he did not have an established business relationship with Travelcomm.<sup>13</sup> As discussed below, we base our action here on this consumer information. Although we are acting on a single complaint against Travelcomm here, we take action now to protect consumers because Travelcomm has continued to violate the law since our April 2005 citation.

5. Section 503(b) of the Act authorizes the Commission to assess a forfeiture of up to \$11,000 for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act by a non-common carrier or other entity not specifically designated in section 503 of the Act.<sup>14</sup> In exercising such authority, we are to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>15</sup>

### III. DISCUSSION

#### A. Violations of the Commission's Rules Restricting Prerecorded Messages

---

<sup>11</sup> See December 27, 2004, email complaint of Arlene Reardon requesting Commission action, which was attached to the citation.

<sup>12</sup> See the consumer complaint of James Rayburn requesting Commission action, filed August 12, 2006 (received prerecorded message on August 12, 2006), and affidavit provided by Mr. Rayburn.

<sup>13</sup> *Id.*

<sup>14</sup> Section 503(b)(2)(C) provides for forfeitures up to \$10,000 for each violation in cases not covered by subparagraph (A) or (B), which address forfeitures for violations by licensees and common carriers, among others. See 47 U.S.C. § 503(b). In accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, Pub. L. 104-134, Sec. 31001, 110 Stat. 1321, the Commission implemented an increase of the maximum statutory forfeiture under section 503(b)(2)(C) to \$11,000. See 47 C.F.R. § 1.80(b)(3). The Commission has amended its rules to increase the maximum penalties to account for inflation since the last adjustment of the penalty rates. The new amounts apply to violations that occurred after September 7, 2004. *Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004) (\$11,000 statutory maximum remained unchanged).

<sup>15</sup> 47 U.S.C. § 503(b)(2)(D); *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17100-17101, (1997), recon. denied, 15 FCC Rcd 303 (1999); *Get-Aways, Inc., Forfeiture Order*, 15 FCC Rcd 4843 (2000).

6. As noted above, Travelcomm initiated prerecorded messages that invited customers to try its travel vacation tickets. Based on the record before us, we find that the prerecorded message at issue here was not made for any emergency or non-commercial purposes, and was not on behalf of a tax-exempt, nonprofit organization, but was commercial in nature and included or introduced an “unsolicited advertisement” or constituted a “telephone solicitation.” We have previously found that “prerecorded messages containing free offers and information about goods and services that are commercially available are prohibited to residential telephone subscribers, if not otherwise exempt.”<sup>16</sup> The Commission's rationale was based on a finding by Congress that consumers considered the prerecorded telephone calls to be “a nuisance and an invasion of privacy.”<sup>17</sup>

7. The record also indicates that Travelcomm did not have the prior express consent of the consumer here to deliver this unsolicited advertising message or telephone solicitation. Further, Travelcomm has provided neither argument nor evidence in response to our citation to prove tax-exempt nonprofit status or an established business relationship with any of the consumers that it was calling. Nor has Travelcomm provided any other information that might provide a defense to the allegations at issue here. Therefore, based on the evidence in the record, including the consumer's affidavit, we find that the prerecorded message was an unsolicited advertisement or telephone solicitation that was prohibited by section 227(b)(1)(B) of the Act<sup>18</sup> and Section 64.1200(a)(2)<sup>19</sup> of the Commission's rules.

## **B. Proposed Forfeiture**

8. We conclude that Travelcomm apparently willfully or repeatedly violated the Act and the Commission's rules and orders by delivering unsolicited, prerecorded advertising messages. Travelcomm apparently did not cease its unlawful conduct even after the Commission staff issued a citation warning that it was engaging in unlawful conduct and could be subject to monetary forfeitures. Accordingly, a proposed forfeiture is warranted against Travelcomm for its apparent willful or repeated violations of section 227 of the Act and of the Commission's rules and orders regarding restrictions on telephone solicitations.

9. Although the Commission's Forfeiture Policy Statement does not establish a base forfeiture amount for violating the prohibition on delivering unsolicited, prerecorded advertising messages to a residential telephone line, we recently found these violations to be similar in nature to violating the prohibition on delivering unsolicited advertisements to telephone facsimile machines. In *Warrior Custom Golf*,<sup>20</sup> we considered \$4,500 per pre-recorded advertising message to be an appropriate base amount, and we apply that amount to the apparent unsolicited, prerecorded advertising violation

<sup>16</sup> *TCPA Revisions Report and Order*, 18 FCC Rcd at 14097-98 (2003).

<sup>17</sup> *Id.* at 14,097. The Commission also noted that Congress had determined that the prerecorded messages “cause greater harm to consumers' privacy than telephone solicitations by live telemarketers” because consumers feel powerless to stop the messages, which are often delivered to answering machines and often provide no means to request placement on a do-not-call list. *Id.*

<sup>18</sup> 47 U.S.C. § 227(b)(1)(B).

<sup>19</sup> 47 C.F.R. § 64.1200(a)(2).

<sup>20</sup> *See Warrior Custom Golf, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd. 23648, 23652 (Enf. Bur. 2004) (“*Warrior Custom Golf*”) (first *NAL* to address pre-recorded advertising messages); *see also Septic Safety, Inc.*, Apparent Liability for Forfeiture, 21 FCC Rcd. 6868 (Enf. Bur. 2006); *1 Home Lending Corporation, d/b/a Capital Line Financial, LLC.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd. 11852 (Enf. Bur. 2006).

evidenced by James Rayburn's complaint.<sup>21</sup> This results in a proposed total forfeiture of \$4,500. Travelcomm shall have the opportunity to submit evidence and arguments in response to this Notice of Apparent Liability for Forfeiture to show that no forfeiture should be imposed or that some lesser amount should be assessed.<sup>22</sup>

## V. CONCLUSION AND ORDERING CLAUSES

10. We have determined that Travelcomm Industries, Inc. apparently violated section 227 of the Act and the Commission's related rules and orders by delivering the unsolicited, prerecorded advertising message identified above. We have further determined that Travelcomm Industries, Inc. is apparently liable for a forfeiture in the amount of \$4,500.

11. ACCORDINGLY, IT IS ORDERED, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b)(5),<sup>23</sup> and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, and under the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. § 0.111, 0.311, that Travelcomm Industries, Inc. IS hereby NOTIFIED of an Apparent Liability for Forfeiture in the amount of \$4,500 for willful or repeated violations of section 227(b)(1)(B) of the Act, 47 U.S.C. § 227(b)(1)(B), section 64.1200(a)(2) of the Commission's rules, 47 C.F.R. § 64.1200(a)(2), and the related orders described above.

12. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules,<sup>24</sup> within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture*, Travelcomm Industries, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment by check or money order, payable to the order of the "Federal Communications Commission," may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251. Payment by overnight mail may be sent to Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, PA 15262-0001, Attn: FCC Module Supervisor. Payment by wire transfer may be made to: ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229. The payment should note NAL/Acct. No. 200732170058.

14. The response, if any, must be mailed both to the Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division, and to Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a

<sup>21</sup> See *Warrior Custom Golf* at ¶ 10 n.27 (citing *Get-Aways, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 4843 (2000); *Tri-Star Marketing, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 11295 (2000); *Tri-Star Marketing, Inc.*, Forfeiture Order, 15 FCC Rcd 23198 (2000); *Carolina Liquidators, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 16837 (2000); *Carolina Liquidators, Inc.*, Forfeiture Order, 15 FCC Rcd 21775 (2000); *21st Century Fax Ltd.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 24406 (2000); *21st Century Fax Ltd.*, Forfeiture Order, 17 FCC Rcd 1384 (2002)).

<sup>22</sup> See 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

<sup>23</sup> 47 U.S.C. § 503(b)(5).

<sup>24</sup> 47 C.F.R. § 1.80.

claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this *Notice of Apparent Liability for Forfeiture* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, SW, Washington, DC 20554.<sup>25</sup>

17. IT IS FURTHER ORDERED that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail Return Receipt Requested to Mr. Rigoberto Sotolongo, Travelcomm Industries at 5850 Lakehurst Drive, # 280, Orlando, Florida 32819 and c/o Dorough, Calzada & Hamner, P.L., 419 North Magnolia Avenue, Orlando, Florida 32801.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Enforcement Bureau

---

<sup>25</sup> 47 C.F.R. § 1.1914.